

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

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ALAN BOGART,

Civil Action No.:

Plaintiff,

-against-

**COMPLAINT FOR VIOLATIONS
OF THE TELEPHONE
CONSUMER PROTECTION ACT**

CHASE BANK,

Defendants.

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Plaintiff, ALAN BOGART ("Plaintiffs"), by and through his attorneys, M. Harvey Rephen & Associates, P.C.,
by Edward B. Geller, Esq., P.C., Of Counsel, as and for its Complaint against the Defendant,
CHASE BANK (hereinafter referred to as "Defendant(s)"), respectfully sets forth, complains and alleges,
upon information and belief, the following:

INTRODUCTION/PRELIMINARY STATEMENT

1. Plaintiff brings this action on his own behalf for damages and declaratory and injunctive relief arising from
the Defendant's violation(s) under Title 47 of the United States Code, §227 commonly known as the Telephone
Consumer Protection Act (TCPA).

PARTIES

2. Plaintiff ALAN BOGART is a resident of the State of New Jersey, residing at
9 Shonny Drive,
Lakewood, New Jersey 08701.

3. Defendant CHASE BANK is an NEW YORK corporation with an address
located at
270 PARK AVENUE NEW YORK, NEW YORK 10017.

JURISDICTION AND VENUE

4. The Court has jurisdiction over this matter pursuant to 28 USC §1331, as
well as 15 USC §1692 *et seq.*
and 28 U.S.C. §2201. If applicable, the Court also has pendent jurisdiction over the state
law claims in this action
pursuant to 28 U.S.C. §1367(a).

5. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2).

FACTUAL ALLEGATIONS

6. Plaintiff repeats, reiterates and incorporates the allegations contained in
paragraphs numbered "1" through "5"
herein with the same force and effect as if the same were set forth at length herein.

7. On or about September 2016, Defendant began communicating with Plaintiff
by means of telephone calls,
emails and texts to the Plaintiff's mobile telephone numbers of 908-910-4448 and 908-910-
5282.

8. The Defendant's calls originated from number 407-732-2415 and the texts to the Plaintiff cell phones showed up from number 24273. The Defendant also sent several emails to the Plaintiff from three different email addresses.

9. On November 30th 2016 the Plaintiff's wife sent out a certified letter to Chase with the account number stating "Please do not email me promotions. Also, do not call or text me even if I have given permission in the past. I'm revoking any permission completely."

10. Since receiving the calls, text and emails and sending out the revocation in the certified letter there have been at least 9 calls, 70 texts and 246 emails to date made from the Defendant to Plaintiff.

FIRST CAUSE OF ACTION
(Violations of the TCPA)

11. Plaintiff repeats, reiterates and incorporates the allegations contained in paragraphs numbered "1" through "10" herein with the same force and effect as if the same were set forth at length herein.

12. According to the Telephone Consumer Protection Act 47 USC §227(b)(A)(iii), any person within the United States or any person outside the United States, if the recipient is within the United States, is prohibited from using any automatic telephone dialing system or an artificial or prerecorded voice to any telephone number assigned to a cellular

telephone service or any service for which the called party is charged for the call.

13. Pursuant to the TCPA Omnibus Declaratory Ruling and Order, July 2015, paragraphs 138 and 139, communications from banking institutions which are exempt "...are all intended to address exigent circumstances in which a quick, timely communication with a consumer could prevent considerable consumer harms from occurring or, in the case of the remediation calls, could help quickly mitigate the extent of harm that will occur." Pursuant to Paragraph 139, (3) and (7)

"In light of these considerations, we adopt the following conditions for each exempted call (voice call or text message)

made by a financial institution:

3) voice calls and text messages are strictly limited to purposes discussed in paras.

129-137 above and must not include

any telemarketing, cross-marketing, solicitation, debt collection, or advertising content;

7) a financial institution must honor opt-out requests immediately."

14. Defendant is in violation of the TCPA paragraphs 139 (3) having used their calls for debt collection and (7), failing to honor Plaintiffs' desire to opt out of both text and telephone communications despite Plaintiff's clear, unequivocal and repeated requests that such automatic calls cease.

15. Defendant violated various provisions of the TCPA, including but not limited to 47 USC §227(b)(A)(iii).

DEMAND FOR TRIAL BY JURY

16. Plaintiff hereby respectfully requests a trial by jury for all claims and issues in its Complaint to which it is or may be entitled to a jury trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment from the Defendants as follows:

- A. For statutory damages provided and pursuant to 47 U.S.C. Section 227;
 - B. For trebled damages to be awarded to the Plaintiff in accordance with the TCPA, for each of the Defendant's willful or knowing violations of the TCPA.
 - C. A declaration that the Defendant's practices violated the TCPA;
 - D. For any such other and further relief, as well as further costs, expenses and disbursements of this action,
- as this Court may deem just and proper.

Dated: April 3, 2017

Respectfully submitted,



EDWARD B. GELLER, ESQ.
EDWARD B. GELLER, ESQ., P.C., OF COUNSEL

M. HARVEY REPHEN REPHEN & ASSOCIATES,

P.C.

15 LANDING WAY
BRONX, NEW YORK 10464

Attorney for the Plaintiff ALAN BOGART

To: CHASE BANK
270 PARK AVENUE
NEW YORK, NY 10017

(Via Prescribed Service)

Clerk of the Court,
United States District Court, District of New Jersey
Clarkson S. Fisher Building & U.S. Courthouse
402 East State Street Room 2020
Trenton, New Jersey 08608
(Via Electronic Court Filing)